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| | | | 3761 | |

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,601

Applicant(s)

PERSSON, CHARLOTTE

Examiner

Karin M. Reichle

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8, 10, 11 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 10, 11 and 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following action is based on the ADS filed 12/04, the amendment to the specification and remarks filed 12/04, the abstract filed 3-31-05 and the claims filed 10-4-05.
2. In accordance with 37 CFR 1.76, especially section (d), the ADS filed 12/04 is deemed to overcome the objection to the oath and declaration set forth in the last Office Action.

Specification

Description

3. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the invention of the claims, and the claims should be commensurate, see MPEP 608.01(d) and 1302.

Appropriate correction is required.

Claim Language Interpretation

4. The terms “absorbent article”, “active additive” and “visual indicator” are defined on page 2, line 24-page 3, line 14 but it is noted that such are not limited to only the specific examples given unless so specifically claimed in the claims. The terminology “activity status of the active additive” is defined as set forth on page 3, lines 19-20.

Claim Rejections - 35 USC § 112

5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A positive antecedent basis for “the uppermost layers of the absorbent article” should be set forth.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cercone ‘150.

See, e.g., Claim Language Interpretation section *supra*, col. 1, lines 8-11, and 21, col. 2, line 19-col. 3, line 8, especially col. 2, line 60-col. 3, line 5, col. 3, line 63-col. 4, line 19, col. 5, line 28-col. 6, line 3, i.e. the absorbent article is the sponge, the active additive is iodine, the visual indicator is the color change in response to the moisture content, i.e. the glycol, see, e.g., col. 5, lines 28-42, which is placed on the outermost surface of the sponge, i.e. an uppermost layer, and the sponge can be used as a tampon or panty liner. It is the Examiner’s first position

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that the method as set forth in claims 16-18 is performed by the Cercone device, see cited portions supra. It is noted that the method of claim 16 does not require a change in the activity status during storage nor specifics as to when the monitoring is performed once storage has begun, i.e. whether it is sometime while the article is still stored and/or after storage, and in the '150 reference the golden color is retained from manufacture, through packaging, i.e. storage, until use where it is seen, i.e. monitored, see col. 2, line 60-col. 3, line 5 again. Therefore, i.e. the Examiner's second position, at the very least, since in normal and usual operation, the method claimed is necessarily performed by '150, the method claimed is considered to be anticipated by '150, see MPEP 2112.02.

8. Claims 1-2, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Moench '949.

See, e.g., Claim Language Interpretation section supra, abstract, Figures 1 and 3, col. 1, lines 58 et seq., col. 2, lines 39-63, col. 5, line 52-col. 6, line 60, col. 7, lines 4-14, especially col. 7, lines 10-14 ("acidified" is defined as "to make or become acid", i.e. produces an acid), col. 9, line 34-col. 10, line 35, col. 10, line 65-col. 11, col. 15, lines 22-31 and claim 10, i.e. the article is 10, the active additive is an acid superabsorbent polymer, citric acid and/or lactic acid, the visual indicator is the color change in response to the acid content, i.e. the bromocresol, see paragraph bridging cols. 9-10, which is placed on a visible uppermost layer 60. Claim 8 recites functions, properties or capabilities of the claimed structure of the absorbent article. Moench teaches the device 10 may function as a catamenial device. Therefore it is the Examiner's first position that Moench expressly teaches the functions, properties and capabilities set forth in claim 8. In any case, Moench teaches all the claimed structure of the absorbent article.

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Therefore there is sufficient factual evidence to conclude that the functions, properties and capabilities of such claimed structure are also inherent in the same structure of Moench, see MPEP 2112.01.

9. Claims 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fenn et al '479.

Claim 16: See, e.g., Claim Language Interpretation section, abstract, col. 1, lines 7-36, col. 1, line 60-col. 2, line 17, col. 3, lines 31-47, i.e. the absorbent article is the article comprising the hydrophilic cloth, the active additive is the antimicrobial compound, the visual indicator is the dye placed on a visible surface area of the article, i.e. one of the uppermost layers. The Fenn reference teaches applying the indicator during manufacture and the indicator being present at time of use. It is noted that the method of claim 16 does not require a change in the activity status during storage nor specifics as to when the monitoring is performed once storage has begun, i.e. whether it is sometime while the article is still stored and/or after storage, and in the '479 reference the color is retained from manufacture through, i.e. storage, use where it is seen, i.e. monitored, see portions cited supra. Therefore, at the very least, since in normal and usual operation, the method claimed is necessarily performed by '479, the method claimed is considered to be anticipated by '479, see MPEP 2112.02.

Claim 17: Claim 17 recites functions, properties or capabilities of the claimed structure of the absorbent article. See col. 2, lines 6-10 of Fenn et al. Furthermore Fenn et al teach all the claimed structure of the absorbent article. Therefore there is sufficient factual evidence to conclude that the functions, properties and capabilities of such claimed structure are also inherent in the same structure of Fenn et al, see MPEP 2112.01.

10. Claims 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Roden et al '976.

See, e.g., Claim Language Interpretation section, abstract, col. 6, lines 24-35, col. 6, line 66-col. 8, line 15, especially col. 7, lines 50-51, col. 8, line 48-col 9, line 24, Example 11, i.e. the absorbent article is the article comprising the diaper, sponge, towelette, or pad, the active additive is at least one of the acids of the composition or an acid used in combination with the composition, and the visual indicator is/are the pH indicator dye(s). The '976 reference teaches the efficacy of the acid can be visually determined by the pH indicator dyes. The '976 reference also discloses the articles have a shelf life or are carried, i.e. storage, see portions cited supra, and then are used, i.e. seen, i.e. monitored. Again it is noted that the method does not require a change in the activity status nor specifics as to when the monitoring is performed once storage has begun, i.e. whether it is sometime while the article is still stored and/or after storage. Therefore, at the very least, since in normal and usual operation, the method claimed is necessarily performed by '976, the method claimed is considered to be anticipated by '976, see MPEP 2112.02.

11. Claims 1-3, 15-16, 18-19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al '543.

Claims 1-3 and 15: See, e.g., Claim Language Interpretation section supra, abstract, Figures 1 and 3, col. 4, lines 26-29 and 39-47, col. 4, line 66-col 5, line 24, col. 5, lines 61-68, ("glass" as defined by the dictionary is "any of a large class of materials..., that are generally transparent,...."), i.e. the article is 11, the active additive is 13 (Note such produces an acid upon

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contact with a basic spill to neutralize such), and the visual indicator is 15, e.g. a pH indicator such as methyl red.

Claim 23: The package in which the article and indicator are stored is 9 which is glass. Therefore, it is the Examiner's first position that '543 teaches the invention as claimed in claim 23, i.e. the stored visual indicator can be observed from outside the package. It is noted that the claim does not require any specific activity status be visually observed. In any case, i.e. the Examiner's second position, '543 teaches a visual indicator inside a transparent package. Therefore there is sufficient factual evidence to conclude that the functions, properties and capabilities of such claimed structure, i.e. allowing observation of the indicator from outside the package, is inherent in the structure of '543, see MPEP 2112.01.

Claims 16 and 18-19: See discussion supra, i.e. '543 teaches putting the combination in a package, i.e. dispenser, i.e. storage, which package is transparent, i.e. combination can be seen, i.e. monitored. Again it is noted that the method does not require a change in the activity status nor specifics as to when the monitoring is performed once storage has begun, i.e. whether it is sometime while the article is still stored and/or after storage. Therefore, at the very least, since in normal and usual operation, the method claimed is necessarily performed by '543, the method claimed is considered to be anticipated by '543, see MPEP 2112.02.

Claim Rejections - 35 USC § 103

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 3 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moench et al '949 in view of Schoenfeld '444.

Claim 15 requires the visual indicator be comprised of methly orange, methyl red or methyl violet whereas Moench teaches the use of bromocresol purple. The criticality of using these particular indicators versus other indicators such as bromocresol purple has not been disclosed. Bromocresol purple and methyl red discolor or indicate in the region of neutrality to weak acidity. Moench teaches using the indicator to indicate the pH of the article is within the range of 3 to 5. See Schoenfeld '444 at the pH indicator chart bridging cols. 2-3, i.e. methyl red also indicates or changes color between 3 and 5. Therefore to make the bromocresol purple of Moench methyl red instead would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the modified Moench device would also include the limitations of claim 3.

14. Claims 4 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moench et al '949 in view of Applicant's admissions of the teachings of the prior art in the BACKGROUND ART section of the instant application and SCA '846.

Applicant claims the active additive is a microorganism, more specifically an acid producing microorganism, even more specifically lactobacillus, and most specifically a particular strain of lactobacillus whereas Moench, while teaching the desire for providing greater acidic buffer capacity, i.e. greater acidifying properties, does not specifically teach such an active additive. The criticality of using these particular active additives versus the other active additives such as lactic acid or citric acid or acid SAP as disclosed by Applicant is not disclosed

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in the instant application. Note again the portions of Moench cited as well as the teachings of the prior art as set forth by Applicant in the Background section of the instant application and SCA '846 at page 1, line 6-page 4, line 21 and page 4, line 31-page 7, line 14, i.e. acid active additives such as acid SAP, lactic acid and citric acid as claimed by Moench and acid producing microorganisms as claimed in claims 4, 9 and 10 all function to prevent malodors and inhibit growth of bacteria in catamenial devices. Therefore to make an active acid additive of Moench an acid producing microorganism instead as taught by SCA '846 would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the modified Moench device would also include the limitations of claims 4 and 9-10. Claim 11 requires the lactobacillus be of a particular strain. Note again the lack of disclosure of the criticality of such strain over other strains of lactobacillus. Also note the prior art combination teaches the general conditions of the claims, i.e. an absorbent article including a acid producing lactobacillus microorganism and a visual indicator, although it does not teach this use of the claimed strain. However, since the general conditions are disclosed, it would not be inventive to discover the optimum or workable strains of lactobacillus by routine experimentation, see *In re Allen et al*, 105 USPQ 233.

15. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roden et al '976 and Schoenfeld '444.

Claim 19 requires the visual indicator be a specific visual indicator whereas '976 only teaches the use of a pH indicator dye. The criticality of using particular indicators versus other indicators has not been disclosed, note page 3, first full paragraph of the instant specification, i.e.

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pH indicators which indicate acids in the lower part of the acid scale (It is noted that acids have a pH scale from more than 0 to less than 7), i.e. methyl red, and acids at the lower end, i.e. strong acids, i.e. cresol red. '976 teaches using the indicator to indicate the pH of the combination, see, e.g., col. 3, lines 8-12 and 22-23, and col. 9, lines 20-26 of '976, i.e. the acidity of the combination can be "low" (Since acids have a pH scale from more than 0 to less than 7, "low" is interpreted to obviously include those which are below 3.5, i.e. the low part of the pH acid scale), such as, e.g., less than 1, i.e. a strong acid. See Schoenfeld '444 at the pH indicator chart bridging cols. 2-3, i.e. acids in the lower part of the acid pH scale, i.e. of "low" pH, include at least one of those claimed those claimed, e.g. Methyl red. Therefore to make the pH indicator dye of '976 one of the claimed visual indicators would be obvious to one of ordinary skill in view of the recognition that such claimed visual indicator visually indicates an acid strength as illustrated by Schoenfeld and the desire of Roden to have a combination which has and visually indicates such an acid strength.

16. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roden et al '976 in view of Applicant's admissions of the teachings of the prior art in the BACKGROUND ART section of the instant application and SCA '846.

Applicant claims the active additive is a microorganism, more specifically an acid producing microorganism, even more specifically lactobacillus whereas '976, while teaching the desire for providing greater acidic buffer capacity, i.e. greater acidifying properties, does not specifically teach such an active additive. The criticality of using these particular active additives versus the other active additives such as lactic acid or citric acid or acid SAP as disclosed by Applicant is not disclosed in the instant application. Note again the portions of '976

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cited and additionally col. 3, lines 6-7 and col. 5, lines 46-49, i.e. citric acid or lactic acid, as well as the teachings of the prior art as set forth by Applicant in the Background section of the instant application and SCA '846 at page 1, line 6-page 4, line 21 and page 4, line 31-page 7, line 14, i.e. acid active additives such as lactic acid and citric acid as disclosed by '976 and acid producing microorganisms as claimed in claims 20-22 function to prevent malodors and inhibit growth of bacteria absorbent articles such as diapers, pads, etc. Therefore to make the citric acid of '976 an acid producing microorganism instead as taught by SCA '846 would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the modified Roden device would also include the limitations of claims 20-22.

Response to Arguments

17. Applicant's remarks have been considered but are either deemed moot in that such issues have not been reraised or are deemed not persuasive for the reasons set forth supra. Specifically, with respect to Cercone, Moensch and Fenn as still applied, Applicant's remarks are considered narrower than the claim language, see discussion of the claim language in paragraphs 7 and 9 supra, and the teachings of the prior art, see the discussion of the claim language "producing an acid" and the teaching of Moensch of "acidifying" in paragraph 8 supra.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other cited but not applied references teach various active ingredients and/or indicators and/or packages.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the claiming of an additive which produces an acid in claim 1 (It is noted now cancelled claim 5 only required an acid and now cancelled claim 9 required an acid producing microorganism, i.e. not the same scope as that now claimed in claim 1), the amendments to claims 16-17 and new claims 18-23.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
December 17, 2005